

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 520 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHANKERLAL MISHRIMAL

Versus

STATE OF GUJARAT

Appearance:

MR KV SHELAT for Petitioners
MR SR DIVETIA, APP for Respondent No. 1
MR NV SOLANKI for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 18/03/97

ORAL JUDGEMENT

The original accused in Criminal Case No. 48 of 1985 pending in the Court of Metropolitan Magistrate of Ahmedabad have preferred the present application under Sec. 482 of the Code of Criminal Procedure to quash and set aside the said criminal case.

2. Respondent No. 2 Shri Hiralal Bachraj has filed

the said Criminal Case No. 48 of 1985 in the Court of Metropolitan Magistrate Court No. 4, Ahmedabad by alleging that his partnership firm M/s Vijay Textile was having business transactions of selling and purchasing cloth with M/s Mahalaxmi Textile of Coimbatore of which the present petitioners except Shri Shankerlal Mishrimal are the partners. The said M/s Mahalaxmi Textile had business transactions with the complainant's firm between 11.2.1978 to 30.6.1980. They have made certain payments to the tune of Rs. 1,19,188-58 but there were dues and towards the said dues, respondent No. 2 - complainant had filed Summary Civil Suit No. 1615 of 1981 on 19.6.1981. It is further stated by the complainant that the said suit was decreed by passing an ex-parte decree. Thereafter, the accused-petitioners No. 2 to 4 filed an application to set aside the said ex-parte decree. The said application was allowed by directing the said M/s Mahalaxmi Textile to deposit Rs.5,000/- in order to show their bonafides, the Court also granted leave to defend. It is further alleged by the complainant - respondent No. 2 that after they were granted leave to defend, the petitioners Nos. 2 to 4 filed a written statement and in their written statement they produced their statement of accounts and contended that they were not owing anything to M/s Vijay Textile and whatever dues were paid to petitioner No. 1 i.e. accused No. 1 who is one of the partners of M/s Vijay Textile had also passed a receipt in their favour. It is further claimed by the complainant in his complaint that accused no. 1 Shankerlal Mishrimal knew about the said receipt and the payment but he avoided to give any reply. According to him, there are no entries in their statement of accounts. Thus, he contended that the receipt produced by the accused Nos. 2 to 4 and the statement of accounts produced by them are false and fabricated documents and thereby they have committed offences punishable under Sections 468, 471, 474, 420, 477 (a) and 120 (b) of the Indian Penal Code. These are gists of complaint filed on 15th July, 1985. The learned Metropolitan Magistrate was pleased to direct the police to carry out investigation under Section 156 (3) of Criminal Procedure Code.

3. The petitioners have come to get an order of quashing the said criminal prosecution. According to them, the said complaint is lodged by respondent No. 2 in order to take a vendetta against the petitioner No. 1 and in order to harass the other petitioners and to pressurise them to satisfy their claim. The petitioner No. 1 has filed Civil Suit No. 5009 of 1987 for dissolution of partnership between petitioner No.1, respondent No. 2 and other partners. Thus, they

contended that the prosecution in question is a clear case of misuse of process of law and, therefore, the Court should exercise its powers under Section 482 of the Code of Criminal Procedure Code and quash the said prosecution. I am aware that when this Court is to exercise powers under section 482 of the Code of Criminal Procedure, it is not open for me to have the appreciation of the evidence and I have to appreciate the averments made in the complaint on giving the face value to the said averments. The powers under section 482 of the Code of Criminal Procedure are to be exercised by the Courts by bearing the said aspect of the matter. The powers are to be exercised only in exceptional cases where there is a clear case of misuse of process of law. In the case of Punjab National Bank Vs. Surendra Prasad Sinha (AIR 1992 SC 1815, the Apex Court has laid down the following principles for exercising the powers under Section 482 of the Code of Criminal Procedure.

"Judicial process should not be an instrument of oppression or needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances in consideration before issuing process lest it would an instrument in the hands of private complainant as vendetta to harass the persons needlessly."

Therefore, bearing the said observations, I proceed to consider the case before me. It is clearly admitted by the complainant that petitioner Nos. 2 to 4 who are partners of M/s Mahalaxmi Textile, Coimbatore had business transactions with respondent No. 2 partnership firm M/s Vijay Textile. They were owing certain dues on the said transactions and for that purpose he has also filed a suit to get money decree. He has clearly admitted that he was fortunate in getting an ex-parte decree but subsequently, the petitioners No. 2 to 4 filed an application to set aside the said decree and the Court was pleased to set aside the ex-parte decree and granted leave to defend to petitioners No. 2 to 4. He has further stated in his complaint that the respondents No. 2 to 4 have produced the statement of accounts to show that as per their statement of accounts nothing is due to Vijay Textile and they had also produced receipts signed by petitioner No. 1 who is admittedly a partner of Vijay Textile and partner of respondent No. 2. He had issued a receipt for the payment made by petitioners No. 2 to 4. It is further claimed in his complaint that though he had asked about the same to petitioner No. 1, the petitioner No. 1 avoided to give him any reply. Now

in view of the above circumstances, the claim of the petitioner that the statement of accounts produced by the petitioners No. 2 to 4 and the receipt for payment signed by petitioner No. 1 and produced by respondents No. 2 to 4 should not be accepted as they are fabricated. But when those documents are produced in the suit, it is not possible to consider and decide in a criminal proceeding the said claim of the complainant-respondent No. 2. Because they are the documents which they have produced to substantiate their defence in the Civil suit of summary suit No. 1615/81. The parties will be at liberty to prove the said documents and also to disapprove the said documents and to show that they are false and fabricated documents. But recourse taken by respondent No. 2 in filing a criminal prosecution is a clear case of abuse of process of law. Therefore, from the averments made in the complaint itself, it would be quite clear that the real dispute between the parties is a civil dispute and the proper forum for getting decision on the dispute is the civil Court and not a criminal prosecution. Therefore, in the circumstances, I hold that this prosecution is a clear case of abuse of process of law and also it will waste the public time and money to proceed further with the said prosecution and I hold that the powers under Section 482 of the Code of Criminal Procedure should be exercised in this case. I accordingly allow this petition and I order that the prosecution of Criminal Case No. 48 of 1985 on the file of Metropolitan Magistrate Court No. 4 is hereby quashed and set aside. Rule is made absolute.
